Astramatics, Inc. and its alter ego Astronumatic, Inc. *and* Local 918, International Brotherhood of Teamsters, AFL–CIO. Case 29–CA–16726

April 9, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by Local 918, International Brotherhood of Teamsters, AFL–CIO, the Union, July 20, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Astramatics, Inc. and its alter ego Astronumatic, Inc., the Respondents, alleging that they have violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondents have failed to file an answer.

On March 10, 1993, the General Counsel filed a Motion for Summary Judgment. On March 15, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the Complaint shall be deemed to be admitted . . . by each of [the Respondents] to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for General Counsel, by letter dated January 29, 1993, notified the Respondents that unless an answer was received by February 8, 1993, a Motion for Summary Judgment would be filed. On February 8, 1993, on request of the Respondent, the Regional Director extended the time to file an answer to February 16, 1993. However, no answer has been filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Astramatics has maintained its principal office and place of business at 4041 Second Avenue, Brooklyn, New York, where it is engaged in the wholesale repair of pumps, compressors, generators, and other machinery. At all times material herein, and beginning on or about April 1, 1992, when it commenced operations, Respondent Astronumatic has maintained its principal office and place of business at 4102 Second Avenue, Brooklyn, New York, where it is engaged in the wholesale repair of pumps, compressors, generators, and other machinery. Respondent Astramatics and Respondent Astronumatic are, and have been at all times material, affiliated businesses with common officers, ownership, directors, and operators, and constitute a single integrated business enterprise; the directors and operators formulate and administer a common labor policy for the aforenamed companies, affecting the employees of the companies. Since on or about April 1, 1992, Respondent Astronumatic has been engaged in the same or related business as Respondent Astramatics, at a different location, using the same equipment used by Respondent Astramatics and employing the same employees and supervisors as had been employed by Respondent Astramatics. Respondent Astronumatic has been the disguised continuance and alter ego of Respondent Astramatics. Alternatively, since the date it began operating, on or about April 1, 1992, Respondent Astronumatic has operated the business of Respondent Astramatics in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Respondent Astramatics and, accordingly, Respondent Astronumatic has continued the employing entity and is a successor to Respondent Astramatics.

During the year ending March 30, 1992, which period was representative of its annual operations, Respondent Astramatics, in the course and conduct of its operations generally, purchased and received at its various places of business, located in the State of New York, products, goods, and materials valued in excess of $50,000 directly from various enterprises located outside the State of New York.

On a projected annual basis, since April 1, 1992, which period is representative of its annual operations, Respondent Astronumatic, in the course and conduct of its operations generally, will purchase and receive at its various places of business, located in the State of New York, products, goods, and materials valued in excess of $50,000 directly from various enterprises located outside the State of New York.

During the year ending March 30, 1992, which period was representative of its annual operations, Re-

spondent Astramatics, in the course and conduct of its business operations, performed services valued in excess of $50,000 for various enterprises located in the State of New York, each of which enterprises, in turn, is directly engaged in commerce and meets a Board standard for the assertion of jurisdiction, exclusive of indirect inflow or indirect outflow.

On a projected annual basis, since April 1, 1992, which period is representative of its operations, Respondent Astronumatic, in the course and conduct of its business operations, will perform services valued in excess of $50,000 for various enterprises located in the State of New York, each of which enterprises, in turn, is directly engaged in commerce and meets a Board standard for the assertion of jurisdiction, exclusive of indirect inflow or indirect outflow.

We find that Respondents, and each of them, are now and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. The bargaining unit of Respondent Astramatics' employees set forth in section I, "Recognition," of the collective-bargaining agreement, referred to below, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. Since in or about 1977, and at all times material, the Union has been the designated collective-bargaining representative of the employees in the bargaining unit described above, and since that date, the Union has been recognized as such representative by Respondent Astramatics. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from April 8, 1991, to April 7, 1994.

3. The agreement described above contains provisions requiring Respondent Astramatics to make periodic monthly payments to the Union's pension fund and health and welfare fund.

4. The agreement described above contains a provision requiring Respondent Astramatics to deduct money from the wages of employees in the unit described above who have signed valid dues-checkoff authorization agreements on behalf of the Union and to remit the moneys to the Union.

5. At all times material, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit described above for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of all employees of Respondents in the bargaining unit described above.

6. Since on or about February 19, 1992, a date 6 months preceding the filing and service of the instant charge, Respondent Astramatics and Respondent Astronumatic have failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of their employees in the unit described above, thereby repudiating the collective-bargaining agreement described above by, inter alia, failing to make monthly contributions on behalf of bargaining unit employees described above to the Union's health and welfare fund and pension fund, and by failing to remit moneys to the Union which Respondents deducted, or were required to deduct, from the wages of their employees pursuant to valid dues-checkoff authorizations.

CONCLUSION OF LAW

By the conduct described above, Respondent Astramatics and Respondent Astronumatic have failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of their employees in the unit described above, thereby repudiating the collective-bargaining agreement described above and have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents have violated Section 8(a)(5) and (1) by failing to make contractually required payments to the pension fund and the health and welfare fund, we shall order the Respondents to make whole their unit employees by making all payments that have not been made and that would have been made but for the Respondents' unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondents shall reimburse unit employees for any expenses ensuing from their failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondents have violated Sec-

tion 8(a)(5) and (1) by failing to deduct union dues from employees' pay and to remit the dues to the Union, we shall order the Respondents to deduct and remit union dues as required by the agreement and to reimburse the Union for its failure to do so since February 19, 1992, with interest computed in the manner prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondents, Astramatics, Inc. and its alter ego Astronumatic, Inc., Brooklyn, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Local 918, International Brotherhood of Teamsters, AFL–CIO, the Union as the exclusive collective-bargaining representative of their employees in the unit set forth in section I, "Recognition," of the collective-bargaining agreement between Respondent Astramatics and the Union, effective by its terms for the period from April 8, 1991, to April 7, 1994, by repudiating the collective-bargaining agreement described above by, inter alia, failing to make monthly contributions on behalf of bargaining unit employees to the Union's health and welfare fund and pension fund, and by failing to remit moneys to the Union which Respondents deducted, or were required to deduct, from the wages of their employees pursuant to valid dues-checkoff authorizations.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondents' failure to make the contractually required fringe benefit fund payments in the manner set forth in the remedy section of this decision.

(b) Deduct and remit union dues as provided for in the agreement and reimburse the Union for their failure to do so since February 19, 1992, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all others records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facilities in Brooklyn, New York, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to recognize and bargain with Local 918, International Brotherhood of Teamsters, AFL–CIO as the exclusive collective-bargaining representative of our employees in the unit set forth in section I, "Recognition," of our collective-bargaining agreement with the Union, effective by its terms for the period from April 8, 1991, to April 7, 1994, by repudiating the collective-bargaining agreement by failing to make monthly contributions on behalf of our bargaining unit employees to the Union's health and welfare fund and pension fund, or by failing to remit moneys to the Union which we deducted, or were required to deduct, from the wages of our employees pursuant to valid dues-checkoff authorizations.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to make contractually required payments to the fringe benefit funds.

WE WILL deduct and remit union dues as provided for in the collective-bargaining agreement and reim-

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

burse the Union for our failure to do so since February 19, 1992.

ASTRAMATICS, INC. AND ITS ALTER EGO
ASTRONUMATIC, INC.